

# **Non-Profit Hospital Mergers, Acquisitions, and Affiliations**

## **Summary of the Application, Review and Decision Process for Approval by RI Department of Health**

### **Introduction**

A change in ownership of a hospital in Rhode Island requires approval by both the Department of Health (HEALTH) and the Rhode Island Department of the Attorney General (RIAG) under the authority of the Hospital Conversions Act (HCA) (23-17.14). A change in ownership of a health care facility in RI requires approval by the Department of Health as a Change in Effective Control (CEC) (Section 23-17-14.3.). This includes hospitals, nursing homes, diagnostic imaging centers, etc. A change in ownership of a hospital in RI therefore requires approval under both the HCA and CEC statutes.

The HCA and CEC have separate applications, review processes, time frames and decision criteria. However, the Director's decision under both the HCA and CEC may be:

- To approve the application,
- To reject the application, or
- To approve the application with conditions.

The HCA review process and the CEC review process are different from each other in several major areas:

- HCA approval is specific to hospital affiliations whereas CEC approval applies broadly to many different types of health care facilities;
- The eight criteria considered under the HCA are different than the four criteria considered under a CEC decision;
- Under the HCA process, HEALTH has the ability to review confidential information from the applicants, and have confidential investigatory meetings and depositions. The CEC application process is entirely open to the public;
- Once an application is deemed complete, under HCA, HEALTH has 180 days to render a decision, whereas the time frame for consideration of an application for CEC is shorter, usually within 90 days; and
- The HCA application is longer, and requires more information from the applicants as compared to the shorter CEC application.

## **Hospital Conversion Act (HCA)**

An application for a change in ownership of a hospital (HCA) in Rhode Island is submitted jointly to HEALTH and to the RI Office of the Attorney General (RIAG), and is reviewed by staff at each agency.

HEALTH reviews the application in consideration of eight criteria/issues outlined in statute and regulations. These eight criteria are:

1. Satisfactory character, commitment, competence, and standing in the community;
2. Sufficient safeguards to assure the affected community continued access to affordable care;
3. Satisfactory evidence to provide access to care for traditionally underserved populations in the affected community;
4. Safeguards to prohibit inappropriate personal gain by employees, such as “kick-backs”;
5. Commitment to assure the continuation of collective bargaining rights for employees;
6. Commitment to workforce retention to the extent possible, including retraining employees who may be impacted by any proposed restructuring;
7. Demonstration that public interest will be served, including access to essential medical services, provision of safe and adequate treatment, and assurance of a balanced health care delivery system;
8. Issues of market share, especially as they affect quality, access, and affordability of services.

The process and timeline for review of an HCA application is:

- Phase One: “Completeness Review”:
  - Within 30 days of the submission of an application for review, HEALTH and RIAG review the application and determine whether the application is either complete or incomplete.
  - If the application is complete at that point, the review begins.
  - If the application is determined to be incomplete, HEALTH and RIAG specify to the applicants the additional information required to complete the application.
  - The applicants have 30 working days to submit the additional information specified.
  - Upon submission of this additional information, HEALTH and RIAG have 10 working days to review the supplementary information and notify the applicants if the application has been determined to be a complete application accepted for review or denied for incompleteness.
  - Once the application is determined to be complete, RIAG makes a determination as to whether certain information contained in the application is confidential and/or proprietary and not a public record under Rhode Island law.

- Phase 2: Criteria Review

HEALTH then begins its review of the application in consideration of the 8 HCA criteria separately and concurrently with the RIAG review:

- HEALTH posts the non-confidential portion of the application on the HEALTH website in order to make this information available for inspection by the public.
- Public comment is encouraged by HEALTH in the review of an application under the HCA. HEALTH is required to hold one public meeting under the statute, and may elect to hold additional public meetings. HEALTH also encourages written public comment. Information about public meetings and the opportunity to provide written comment is widely distributed and publicly advertised.
- HEALTH may conduct investigatory processes to gather information to inform its decision-making. This investigatory process may include confidential meetings, confidential depositions of parties related to the application, requests for additional information from the applicants, and arranging for experts to provide analysis and advice to HEALTH in support of the application review and decision.

Within 180 days of the determination that an application is complete, the Director of Health makes and issues a decision on an HCA application based on the statutory criteria.

### **Change in Effective Control (CEC)**

An application for a change in ownership of a health care facility is submitted to HEALTH. Four criteria are considered in the review of an application for a change in ownership under the CEC provision:

1. The character, commitment, competence, and standing in the community of the proposed owner or operator;
2. The extent to which the facility will continue to provide care without effect on the viability of the facility;
3. The extent to which the facility will continue to provide safe and adequate treatment for the individuals receiving health care provided by the facility;
4. The extent to which the facility will continue to provide access to underserved populations, in consideration of proposed continuation or termination of services provided by the facility.

The process and timeline for review of a CEC application is:

- HEALTH determines whether the application is complete.
- When HEALTH determines the application is complete, a 90-day review period begins.
- The entire application is made public, and HEALTH provides the public with an opportunity to comment on the application
- The Health Services Council (HSC) reviews the application. The HSC is a 24 member advisory committee who are appointed by the Governor, the RI House of Representatives, and the RI Senate. Committee members represent hospitals, business, the Administration, and the general public.
- Based on a review of the application in consideration of the four CEC criteria, the HSC makes an advisory recommendation to the Director of HEALTH.
- The Director then makes a decision on the application considering the CEC review criteria and the Council's recommendations.

The process of review of a complete CEC application and decision by the Director usually takes no longer than 90 days. A CEC application, and the recommendations of the HSC are all publicly available and HSC meetings are open to the public.

The information in this document is an unofficial synopsis of certain provisions of the Hospital Conversion Act, Chapter 23-17.14 of the Rhode Island General Laws (RIGL) and the Health Facilities Licensing Act, Chapter 23-17-14 RIGL, and should not be considered a formal interpretation or legal analysis issued by HEALTH. This synopsis should not be relied upon for completeness or accuracy as a legal document; the Hospital Conversion Act and the Health Facilities Licensing Act will control in the case of any discrepancy between this synopsis and the Acts.